

Rigel St Drum
31264

87-01

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In The Matter Of:

INDUSTRIAL MARINE, INC.
SAMUEL A. BOYKIN, and

NATIONAL ANODIZING, INC.
GORDON G. INGRAM, JR.

Respondents

PROCEEDING UNDER SECTION 106(a)
OF THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION AND LIABILITY
ACT OF 1980 (42 U.S.C. §9606(a))

) ORDER

) 87-01

The following Order is issued on this date to INDUSTRIAL MARINE INC., SAMUEL A. BOYKIN, NATIONAL ANODIZING, INC., AND GORDON G. INGRAM, JR. ("Respondents") pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §9606(a), by authority delegated to the undersigned by the Administrator of the United States Environmental Protection Agency ("EPA"). Notice of the issuance of this Order has heretofore been given to the State of California.

The Director, Toxics and Waste Management Division, EPA Region 9 has determined that there may be an imminent or substantial endangerment to public health or welfare or the environment caused by an actual or threatened release of hazardous substances from a facility owned by Industrial Marine, Inc., whose president is Samuel A. Boykin, and formerly operated by National Anodizing, Inc., whose president is Gordon G. Ingram, Jr.

This Order directs Industrial Marine, Inc., Samuel A. Boykin, National Anodizing, Inc., and Gordon G. Ingram, Jr. to undertake actions to protect the public and the environment from this endangerment.

FINDINGS OF FACT

Background

1. Respondent Industrial, Inc. is a California corporation and owns a property located at 1610 and 1620 Rigel Street, San Diego, California, bounded by Rigel Street to the east, Chollas Creek to the north and by other properties to the west and south ("the facility").
2. Respondent Samuel A. Boykin is the president of Industrial Marine, Inc.
3. National Anodizing, Inc. ran a metal plating operation at the facility from 1979 to 1983. Upon termination of

National Anodizing, Inc.'s tenancy on or about 24 March, 1986, 55-gallon drums and other containers of various chemicals associated with metal plating belonging to National Anodizing, Inc. were left at the facility, and remain there.

4. Respondent Gordon G. Ingram is the president of National Anodizing, Inc.

5. On or about 30 January, 1987, the EPA inspected the facility and conducted a preliminary assessment of the dangers posed by this site to the surrounding community. The EPA found at least 160 55-gallon drums and 50 smaller-sized receptacles, many of which were stacked two high along a fenceline located adjacent to and within 6 feet of Chollas Creek. Several of the drums were rusting and deteriorated and six drums were leaking. The leakage was observed flowing directly into Chollas Creek, which borders the property. Information provided to the EPA by the San Diego County Department of Health Services and the Respondents indicate that the chemicals present in the drums and receptacles include sodium cyanide, phosphoric acid, nitric acid, chromic acid, sodium hydroxide, metal salts and plating solutions, hydrogen peroxide and flammable solvents. Drums believed to be containing strong acids were stacked on top of drums believed to be containing sodium cyanide. The EPA designated Daniel M. Shane as On-Scene Coordinator ("OSC") at the facility, pursuant to 40 C.F.R. Part 300, published at 50 Fed. Reg. 47912 (November 20, 1985).

6. Sodium cyanide and strong acids are incompatible

materials. Should sodium cyanide come into contact with a concentrated acid, a release of hydrogen cyanide gas would occur. Release of hydrogen cyanide gas may be life-threatening. Populations at risk from a release of hydrogen cyanide chemicals at the facility include people working at the site, residents in the neighborhood, children at the elementary school located 1/2 mile downwind of the facility, and automobile passengers on adjacent roads and the interstate freeway (I-5) located 100 yards downwind of the facility.

7. If acidic and caustic materials, both of which are included among the chemicals believed to be present at the facility, come into contact, a potential is created for ignition and fire. The ensuing reaction could generate sufficient heat to ignite surrounding materials. A fire could expose nearby residents and workers to toxic byproducts of combustion and could result in contaminated run-off of fire-fighting water.

8. A release of hazardous substances from the facility into Chollas Creek could expose residents of a Navy housing development located 1/4 mile downstream to toxic fumes. In addition, a flood tide could carry a chemical discharge further into the City of San Diego. The ecology of the Creek and of the San Diego Harbor downstream could be severely harmed.

9. A threat of direct human contact with hazardous

substances exists, as many of the hazardous substances are stored next to an area offering unsupervised public access.

DETERMINATIONS

Based upon the foregoing Findings of Fact, the Acting Director, Toxics and Waste Management Division, EPA Region 9 has made the following determinations:

1. The Respondents are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
2. The site located at 1600 Rigel Street, San Diego, California, is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
3. Respondents National Anodizing, Inc. and Gordon G. Ingram, Jr. operated the facility at the time hazardous substances were improperly stored and/or disposed, and are responsible parties as defined in Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3).
4. Respondents Industrial Marine, Inc. and Samuel A. Boykin are current owners of the facility and are responsible parties as defined in Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3).
5. Chemicals stored at the facility, including those listed in paragraph 5 in the Findings of Fact are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
6. The abandonment of the drums and other receptacles containing hazardous substances at the facility, and the

leakage of hazardous substances from receptacles at the facility, referred to in paragraphs 4, and 5 in the Findings of Fact, are "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

7. The disposal of incompatible chemicals near each other and the disposal of hazardous substances in an area offering unsupervised public access described in paragraphs 5, 6, 7, and 9 constitute "threatened releases" as referred to in Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

8. The releases or threatened releases of hazardous substances at the facility may present an imminent and substantial endangerment to public health or welfare or the environment.

9. In order to prevent or mitigate immediate and significant risk of harm to public health or welfare or the environment, it is necessary that immediate removal action be taken to contain and prevent the release or threatened release of hazardous substances from the facility.

10. The response measures ordered herein are consistent with the National Contingency Plan, 40 C.F.R. Part 300, and are necessary to protect public health or welfare or the environment.

11. The Respondents are jointly and severally liable for conducting the actions ordered herein.

ORDER

Based upon the foregoing Findings of Fact, and Determinations, Respondents are hereby ordered and directed to implement the following measures:

Clean-up Requirements

1. The Respondents shall clean up the facility to the point that there remains no endangerment to public health or welfare or the environment from the improper storage or disposal at the facility, as determined by the OSC.

Access

2. The Respondents shall grant access to employees and authorized representatives of EPA and the State of California to the facility for the purpose of verifying compliance with the terms of this Order.

On-Scene Coordinator

3. The Respondents shall assist the OSC referred to in paragraph 5 of the Findings of Fact, or any OSC for the facility subsequently designated by the EPA, in the execution of his authorities. The OSC shall have the authority vested in the "On-Scene Coordinator" by 40 C.F.R. Part 300, published at 50 Fed. Reg. 47912 (November 20, 1985), including the authority to: (1) be present on-site at all times when response work is being undertaken pursuant to this Order, (2) observe, take photographs and make other report on the progress of the work as the OSC deems appropriate, and (3) review records, files and documents relevant to the Order.

Compliance With Applicable Laws

4. In carrying out the terms of this Order, the Respondents shall comply with all federal, state and local laws and regulations. Respondents shall also obtain all required state and local permits.

Government Liabilities

5. The United States Government shall not be liable for any injuries or damages to persons or property resulting from the acts or omissions of the Respondents, their employees, agents or contractors in carrying out activities pursuant to this Order, nor shall the Federal Government be held as a party to any contract entered into by the Respondents or their agents in carrying out activities pursuant to this Order.

Endangerment During Implementation

6. In the event that the Director, Toxics and Waste Management Division, EPA, Region 9 determines that any activities (whether pursued in implementation of or in noncompliance with this Order) or circumstances are endangering public health or welfare or the environment, the Director may order the Respondents to stop further implementation of this Order for such period as needed to abate the endangerment.

Penalties for Noncompliance

7. Any Respondent who, without sufficient cause, willfully violates, or fails or refuses to comply with this Order, or any portion thereof, may be subject to civil penalties of not

more than \$25,000 for each day in which a violation occurs or such failure to comply continues, pursuant to the provisions of Section 106(b) of CERCLA, 42 U.S.C. §9606(b). Further, if any Respondent fails without sufficient cause to properly provide the removal or remedial action ordered herein, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Government as a result of such failure to take proper action, pursuant to the provisions of Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3).

The EPA may take over the removal action at any time if the EPA determines the Respondents are not taking appropriate action to mitigate the site hazard. In the event that the EPA assumes responsibility for the removal action, the Respondents shall be liable for all costs incurred by the EPA to mitigate the site hazard. The EPA may order additional removal or remedial actions deemed necessary by the EPA to protect public health or welfare or the environment.

Opportunity to Confer

9. The Respondents may request a conference with the Director, Toxics and Waste Management Division, EPA Region 9 or his staff to discuss the provisions of this Order. At any conference held pursuant to their request, the Respondents must appear in person or by counsel or other representatives

for the purpose of presenting any objections, defenses, or contentions which they may have regarding this Order. If the Respondents desire such a conference, they must make such a request orally within 24 hours of receipt of this Order, to be immediately confirmed in a written request. The Respondents should make any such request to any of the contact persons listed below.

Parties Bound

9. This Order shall apply to and be binding upon the Respondents, their officers, directors, agents, employees, contractors, successors, and assigns.

Notice of Intent to Comply

10. Immediately upon receipt of this Order, the Respondents shall orally inform the EPA of their intent to comply with the terms of this Order. This shall be confirmed in writing within one (1) day of receipt of this Order.

Effective Date

11. Notwithstanding any conferences requested pursuant to the provisions of this Order, this Order is effective upon receipt, and all times for performance shall be calculated from that date.

It is so ordered on this 10th day of February, 1987.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Jeffrey Zelikson

Jeffrey Zelikson
Acting Director, Toxics & Waste Management Division
U.S. EPA, REGION 9

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